

1 R. JULY SIMPSON, WSBA #45869
WILLIAM MCGINTY, WSBA #41868
2 DIERK MEIERBACHTOL, WBSA #31010
Assistant Attorneys General
3 EMMA GRUNBERG, WSBA #54659
Deputy Solicitor General
4 Washington Attorney General's Office
7141 Cleanwater Dr. SW
5 Olympia, WA 98504-0111
P.O. Box 40111
6 (360) 709-6470
July.Simpson@atg.wa.gov
7 William.McGinty@atg.wa.gov
Dierk.Meierbachtol@atg.wa.gov
8 Emma.Grunberg@atg.wa.gov
Attorneys for Defendant
9 *Washington State Building Code Council*

10 **UNITED STATES DISTRICT COURT**
11 **EASTERN DISTRICT OF WASHINGTON**
AT SPOKANE

12 JAMON RIVERA, et al.,

13 Plaintiffs,

14 v.

15 WASHINGTON STATE
16 BUILDING CODE COUNCIL,

17 Defendant.

NO. 1:23-cv-03070-SAB

DECLARATION OF DUSTIN
CURB

August 11, 2023
Without Oral Argument

18 I, Dustin Curb, declare as follows:

19 1. I am over the age of 18, competent to testify as to the matters herein,
20 and make this declaration based on my personal knowledge.
21
22

1 2. I am a code specialist employed by the Washington State Building
2 Code Council, which is an agency established in the Washington Department of
3 Enterprise Services (DES). This position is the recognized specialist and subject
4 matter expert in multiple building codes. In this position, I provide expert level
5 analysis and consultation to the DES executive management and outside
6 organizations, and independent staff support and specialized expertise to the State
7 Building Code Council and technical advisory groups on the state's building code
8 amendment process. I perform professional level duties by preparing documents
9 and code opinions for council approval. I also provide critical support for the State
10 Building Code Council in its role in establishing the minimum building, residential,
11 mechanical, fire, plumbing and energy code requirements necessary to promote the
12 health, safety and welfare of the people of the state of Washington.

13 3. Prior to my employment with the State Building Code Council, I
14 was employed by Island County Building Department as the Building Official. In
15 that role, my duties included understanding and interpreting plans, diagrams,
16 blueprints and specifications; managing and coordinating the work of supervisory,
17 professional, and technical personnel; and administering a variety of building
18 inspection and related code enforcement activities. As part of that work, I analyzed
19 and checked building plans and specifications; assisted in preparing local code
20 amendments; interpreted building policies and procedures to the general public;
21 and interpreted and applied County policies, procedures, rules and regulations as
22

1 well as the International Building Codes as amended by the State of Washington.

2 4. In these roles, I gained an understanding of the building permitting
3 process in Island County and in Washington State generally. The particulars of
4 building permitting varies to some degree from county to county and also from
5 city to city across Washington State, but the basic outline remains the same.

6 5. Each jurisdiction is required by state law to set out the requirements
7 for a fully completed building application and issuance of building permits. The
8 following items are required in, although as noted above, the same basic materials
9 are required throughout jurisdictions in the State:

- 10 a. Completed application forms for the jurisdiction at issue;
11 b. Building plans;
12 c. Engineering and structural plans, when design exceeds the scope of
13 the prescriptive code provisions;
14 d. Energy code worksheet, if work involves creation of or modification
15 to a climate-controlled building;
16 e. Site plan;
17 f. Proof of approve access permit;
18 g. Proof approved address application;
19 h. Proof of approved septic permit; and
20 i. Proof of approved water availability verification.
- 21
22

1 6. These materials are first reviewed by a jurisdiction's building
2 department for completeness. If the materials appear to be complete, then they
3 are placed in a queue for a review of their compliance with applicable building
4 codes. The applicable building codes are those that are in force at the time the
5 application is received. (This is called "vesting".) These codes include the state
6 building codes established by the State Building Code Council, as well as any
7 local amendments to the code established by the local jurisdiction.

8 7. If, after review, the applicant's plan appears to be compliant with all
9 applicable building codes, the applicant will be issued a building permit for the
10 project. The permit is valid for two years.

11 8. If, after review, the plan does not appear to be compliant, then the
12 applicant is notified of areas in which there is noncompliance. The applicant then
13 has one year to correct the errors, still under the building codes that were in effect
14 at the time. If the errors are not corrected, then, after one year, the application
15 expires and the applicant will be notified of the expiration of the application. If a
16 new application is submitted then the building codes in effect at the time of the
17 new application will be applied.

18 9. If the applicant does not agree that the application had errors, then
19 the applicant may appeal the determination of noncompliance. Each jurisdiction
20 administers its appellate process somewhat differently. In general, however, an
21 administrative hearing will be scheduled by the jurisdiction's hearing examiner.
22

1 The local jurisdiction will be responsible for showing evidence as to why the
2 application had errors, and the applicant will be responsible for showing evidence
3 as to why the permit should have been granted. At the end of the process the
4 hearing examiner will issue a decision. If the decision is not favorable to the
5 applicant, the applicant may appeal the hearing examiner's decision to a
6 Washington State court.

7 10. If at any point in the building permit process the applicant does not
8 agree with the findings of the local building department, the appeal process can
9 begin. It is my experience that local building officials try to resolve these sorts of
10 disputes short of a formal appeal, but the formal appeal process is always
11 available to applicants.

12 I declare under penalty of perjury under the laws of the State of
13 Washington and the United States that the foregoing is true and correct.

14 DATED this 14th day of June 2023 at 1500 Jefferson St,
15 Olympia, WA 98501.

16 
17 Dustin Curb
18 Code Specialist
19 Washington State Building Code Council
20
21
22

DECLARATION OF SERVICE

I hereby declare that on this day I caused the foregoing document to be electronically filed with the Clerk of the Court using the Court's CM/ECF System which will serve a copy of this document upon all counsel of record.

DATED this 22nd day of June 2023, at Tacoma, Washington.

/s/ R. July Simpson

R. JULY SIMPSON, WSBA #45869

Assistant Attorney General